of which he died within a short time. Action was brought for the injury, but instead of its being predicated on defendant's negligence, which is the usual method of recovery, trespass to the person was made the basis of the suit. The appellate court approved of the procedure saying that, as negligence need not be shown to recover for damage done by matter thrown by blasting upon adjoining land, so is it immaterial where one is injured in a highway where he has a right to be, citing with approval the New York case of Sullivan *v.* Dunham, 55 Northeastern Reporter, 923, which states that the doctrine is founded upon the principle "that the safety of property generally is superior in right to a particular use of a single piece of property by its owner," and that the maxim, "sic utere tuo ut alienum non lædas," should be so applied as to protect both person and property from direct physical violence, which, although accidental, has the same effect as if it were intentional.

Subsequent Stockholder's Rights to Sue.—Pollitz, plaintiff in the case of Pollitz *v.* Gould, 94 Northeastern Reporter, 1088, brought an action as a stockholder in behalf of the corporation to set aside as fraudulent a transfer and exchange of several millions of dollars par value of its stock, although the transaction in question was consummated at the expense of the corporation before he acquired his stock. It was argued that one who buys stock subsequent to a transaction, buys subject to it and cannot question it; that the right to question a fraud is not a purchasable commodity, and is not capable of assignment and transfer. The Court of Appeals of New York holds the first argument unsound, unless the prior holder gives binding consent to the transaction; and as to the second, that as it is conceded that one holding stock when a fraud is consummated has the right to have the cause of action prosecuted by the corporation or do it himself for the corporation, it would be an anomalous exception if when he transferred his certificate he would retain this right while he passed all his other rights by the transfer.

Pistols Are Pistols.—One Mitchell was convicted for carrying a concealed weapon and appeals to the Supreme Court of Mississippi in Mitchell *v.* State, 55 Southern Reporter, 354, contending that what he carried was not a pistol because it had no hammer or mainspring. The court holds: "An object once a pistol does not cease to be one by becoming temporarily inefficient. Its order and condition may vary from time to time, without changing its essential nature or character. Its machinery may be more or less perfect. At one time it may be loaded; at another, empty; it may be capped or uncapped; it may be easy to discharge or difficult to discharge, or not capable, for the time, of being discharged at all; still, while it retains the general characteristics and appearance of a pistol, it is a

pistol, and so in common speech would it be denominated. The mainspring being disabled, so as to render a discharge of the weapon impossible in the ordinary mode of using firearms, is no excuse or justification."

Warren, Gzowski & Co. v. Forst & Co.—(Province of Ontario—Court of Appeal)—Evidence—Telephone Conversation between Parties—Testimony of Persons Hearing Words of One Party—Admissibility.—Appeal by the plaintiffs from the judgment of a Divisional Court, 22 O. L. R. 441, ordering a new trial on account of the rejection by the trial Judge of certain evidence tendered by the defendants.

The parties are brokers in Toronto and the dispute is over a stock transaction. Both plaintiffs and defendants admit that there were telephone conversations between them on the 28th and 29th of June.

The defendants proposed to have their stenographer, Annie Slough, who claimed to have been in the same room as her employer during the conversation of the 28th, testify as to what he said through the telephone on that occasion. The trial Judge refused to allow her to do so, on the ground that she could not swear that it was the plaintiff Gzowski that was at the other end of the line, or that he had heard what the defendant Forst had spoken into the telephone. The Divisional Court overruled the trial Judge and ordered a new trial, from which the defendants appeal.

Maclaren, J. A.:—No English or Canadian authority was cited to us on the point. A number of American cases were referred to, the weight of authority there being in favour of the reception of such evidence. Among the cases that may be mentioned are Miles *v.* Andrews, 103 Ill. 262; McCarthy *v.* Peach, 186 Mass. 67; Dannemiller *v.* Leonard, 8 Ohio Circ. 735; People *v.* McKane, 143 N. Y. 455; Shawyer *v.* Chamberlain, 113 Iowa 742.

On principle I do not see how such evidence can be excluded. It is simply an application of the old recognized rules of evidence to modern methods and conditions. After a witness has sworn that he recognized by his voice the person to whom he was speaking, and who was answering him from the other end of the line, it is quite competent to produce in corroboration one who heard what he spoke into the telephone, in so far as it is relevant to the matter in question. In case of an oral contract it is not necessary that each witness should have heard the whole contract. The witness may testify as to what he heard, and it is for the Judge or the jury, as the case may be, to determine what weight is to be attached to it. If, for instance, two persons of different languages, but each understanding the language of the other, were to make a contract, each using his own language, a bystander, knowing only one of these languages, might testify as to what was said in the tongue he understood. Or